



The Office of Secretary of State

Brian P. Kemp
SECRETARY OF STATE

Vincent R. Russo
General Counsel

NOTICE (SEC-2011-04)

RE: Repeal of Chapter 590-4-4 entitled “Prohibited Acts” Consisting of Rules 590-4-4-.01 to 590-4-4-.05

TO ALL INTERESTED PERSONS AND PARTIES:

Pursuant to the Official Code of Georgia Annotated, O.C.G.A. §§ 10-5-70 and 50-13-4, notice is hereby given that the Commissioner of Securities of the Office of the Georgia Secretary of State, (hereinafter “Commissioner”) proposes to repeal chapter 590-4-4 *Prohibited Acts*, consisting of Rules 590-4-4-.01, 590-4-4-.02, 590-4-4-.03, 590-4-4-.04, and 590-4-4-.05.

Attached with this notice is an exact copy of each proposed rule to be repealed. The rules are being repealed under the authority of O.C.G.A. §§ 10-5-70 and 10-5-74. The Commissioner finds that the repeal of said rules is necessary and in the public interest because the rules were promulgated under the Georgia Securities Act of 1973, which the General Assembly repealed in its entirety and replaced pursuant to Act 528 during the 2008 legislative session.

The Assistant Commissioner, in accordance with O.C.G.A. § 10-5-70(f), shall consider the repeal of the proposed rules at 11:00 a.m., on November 17, 2011, in Room 810, Suite 802 West Tower at 2 Martin Luther King, Jr. Drive, S.E., Atlanta, Georgia 30334.

Copies of this notice and exact copy of each proposed rule for repeal are available for review on the Securities Divisions’ web page at <http://www.sos.ga.gov/securities>. Interested persons may submit data, views or arguments in writing to the Commissioner. The Commissioner must receive all comments regarding the proposed repeal of the above-referenced Rules from interested persons no later than 5:00 p.m. on November 15, 2011. Written comments must be sent to: Commissioner of Securities, Securities Division, 2 Martin Luther King, Jr. Drive, S.E., 802 West Tower, Atlanta, Georgia 30334. Written comments may be sent via facsimile to (404) 656-0513, or submitted electronically to SECRules@sos.ga.gov. Please reference “SEC-2011-04” on all comments.

For further information, please contact Tom Zagorsky at (404) 463-0344.

This 13th day of October, 2011.

A handwritten signature in blue ink, reading "Vincent Russo", with a horizontal line extending from the end of the signature.

Vincent R. Russo
Interim Assistant Commissioner of Securities

~~590-4-4-.01 Untrue and Misleading Statements.~~

~~(1) No person shall, in connection with any proceeding under the Act, make or cause to be made to the Commissioner, or anyone acting on the Commissioner's behalf, any written or oral statement that the person knows, or in the exercise of reasonable diligence could know, to contain any untrue statement of material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.~~

~~(2) No person shall file, execute, or sign any notice, application of registration, or document prepared for inclusion in an application of registration under the Act that the person knows, or in the exercise of reasonable diligence could know, contains any untrue statement of material fact or omits to state a material fact necessary to make the statements made, in light of the circumstances in which they were made, not misleading.~~

~~Authority O.C.G.A. Secs. 10-5-10, 10-5-12.~~

~~590-4-4-.02 Installment Sales of Registered Securities.~~

~~In any case where the consideration received by the issuer or underwriter of securities to be registered under Code Section 10-5-5(b) may be a note, a postdated check, or an obligation to give consideration in the future or in any case where the purchaser of such security will not receive a fully paid and non-assessable security, then:~~

~~(1) The prospectus comprising part of the registration statement filed pursuant to Code Section 10-5-5(b) shall contain, in addition to any information required in Code Section 10-5-5(c) or any other section of the Act or these Rules, the following information:~~

~~(a) the minimum amount of the securities to be registered that the issuer or underwriter will sell to a purchaser;~~

~~(b) the terms under which sales of the securities will be made, including the down payment amount, the amount and number of payments that will have to be made, the length of time over which the securities may be purchased, and the interest that the purchaser will be required to pay;~~

~~(c) the commissions, fees, expenses, or other compensation or remuneration that will be paid in connection with such sales of securities, to whom such will be paid, when such will be paid, and whether or not any commissions or fees paid will be paid proportionately upon amounts received from the purchasers as such amounts are received; and~~

~~(d) if any of the securities to be sold are required to be pledged to secure the purchaser's obligation to pay any assessment upon, or to pay for, such securities:~~

~~1. the amount of such securities that will be required to be pledged;~~

~~2. in whose custody the certificate or other document, if any, representing such securities will be maintained;~~

~~3. the conditions under which the seller will foreclose upon such pledged securities, the method by which such foreclosure will be accomplished, and the notice of such foreclosure that will be given to the pledgor;~~

~~4. the method by which securities foreclosed on will be valued;~~

~~5. whether the pledgee may seek to collect from the pledgor personally in addition to or in lieu of foreclosing upon the pledged securities;~~

~~6. the amount of commissions, expenses, fees, or other compensation or remuneration that will be paid in connection with securities that are foreclosed upon and the person to whom such commissions and fees will be paid; and~~

~~7. what the purchaser will receive if the amount received upon enforcement of the pledge exceeds the purchaser's obligation to pay any assessment upon or to pay for such securities.~~

~~(2) Any securities that are foreclosed upon, otherwise become beneficially owned by the issuer or underwriter, or are cancelled can be resold only if such securities are subject to an effective registration statement, are exempt from registration under Code Section 10-5-8 or are sold in exempt transactions under Code Section 10-5-9.~~

~~(3) Each financial statement required to be filed by Code Section 10-5-6(j) and any renewal registration statement filed pursuant to Code Section 10-5-6(i) shall be accompanied by a statement containing the following information:~~

~~(a) the total amount of securities registered under the registration statement that have been sold in consideration of a note, postdated check, or any obligation to give consideration in the future, or which, when issued, were not fully paid and nonassessable;~~

~~(b) the amount of money actually collected on the securities described in (d)(i) above;~~

~~(c) the amount of commissions, fees, expenses, or other compensation or remuneration paid with respect to the securities described in (d)(i) above;~~

~~(d) the amount of past due payments on the securities described in (d)(i) above;~~

~~(e) the amount of the securities described in (d)(i) above foreclosed upon; and~~

~~(f) the amount owing upon the securities described in (d)(i) above.~~

~~(4) The last financial statement required to be filed by Code Section 10-5-6(j) and any renewal registration statement filed pursuant to Code Section 10-5-6(j) shall be accompanied by a list of all persons who have not paid in full for the securities described in (d)(i) above. This list shall be treated as confidential and not subject to public inspection unless the Commissioner shall determine that such treatment is not consistent with the public interest. In which case, he or she may make public such information on this list as he or she deems necessary for the protection of the public interest. This list shall disclose, with respect to every person thereon:~~

~~(a) the amount that remains to be paid and when this amount will be due;~~

~~(b) the amount that is past due;~~

~~(c) the collateral that secures the indebtedness; and~~

~~(d) any action that has been taken to collect any amount that is past due, including any action that has been taken to realize on any pledge that secures the amount owing.~~

~~Authority O.C.G.A. Secs. 10-5-5, 10-5-6.~~

~~590-4-4-.03 Limitation on Designated Dealer Compensation.~~

~~(1) For purposes of Code Section 10-5-12(n), with respect to designated securities as to which a *bona fide* interdealer market exists and the prevailing market price is evidenced, the term “markup” means the difference between the bid and the asked prices in the prevailing interdealer market.~~

~~(2) For purposes of Code Section 10-5-12(n), with respect to designated securities as to which a *bona fide* interdealer market exists and the prevailing market price is not evidenced, the term “markup” means the difference between the retail transaction price to a customer of a designated security and the dealer’s own contemporaneous cost of that security in the interdealer market.~~

~~(3) For purposes of Code Section 10-5-12(n), with respect to securities as to which no *bona fide* interdealer market exists, the term “markup” means the difference between the retail transaction price to a customer of a designated security and the dealer’s historical cost of that security.~~

~~Authority O.C.G.A. Secs. 10-5-10, 10-5-12.~~

590-4-4-.04 Dishonest or Unethical Business Practices.

Every entity, organization, or individual regulated by the Act shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of business. The Commissioner may, at his or her discretion, take such action authorized by the Act regarding any entity, organization, or individual regulated by the Act for any of the following grounds:

- (1) Recommending to a client the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of the information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the entity, organization, or individual after reasonable examination of the client's financial records;
- (2) Guaranteeing a client that a specific result will be achieved (gain or no loss) as a result of the advice or services that will be rendered;
- (3) Failing to disclose to a client that the entity, organization, or individual is controlled by, controlling, affiliated with, or under common control with the issuer of any security before entering into any contract with or for a client for the purchase or sale of such security, and, if any such disclosure is not made in writing, it shall be supplemented by giving or sending written disclosure at or before the completion of the transaction;
- (4) Failing to disclose to clients, in writing, before entering into or renewing any advisory agreement, any material conflict of interest relating to the entity, organization, or individual that could reasonably be expected to impair the rendering of unbiased and objective advice, including, but not limited to:
 - (a) compensation arrangements connected with advisory services to clients that are in addition to compensation from such clients for such services; and
 - (b) charging a client an advisory fee for rendering advice when the entity, organization, or individual will receive a commission for executing securities transactions pursuant to such advice;
- (5) Failing or refusing to furnish a client, upon reasonable request, information to which the client is entitled;
- (6) Failing or refusing to respond to a formal written request or complaint;
- (7) Dividing or otherwise splitting commissions, profits, or other compensation from the purchase or sale of securities with any other entity, organization, or individual that is not registered with the Commissioner as an agent of the commission-splitting entity, organization, or individual;

~~(8) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives, and character of the account (i.e., churning);~~

~~(9) Charging a client an unreasonable fee considering the type of services to be provided, the sophistication and bargaining power of the client, and the experience and expertise of the entity, organization, or individual;~~

~~(10) Failing to provide investors with investment certificates in a timely manner;~~

~~(11) Publishing, circulating, or distributing any advertisement, including an advertisement placed on the internet or distributed by any other electronic means, that is fraudulent, misleading, inaccurate, or that violates any provision of the Act or these Rules; and~~

~~(12) Engaging in any act, practice, or course of business that is fraudulent, deceptive, or manipulative.~~

~~Authority O.C.G.A. Secs. 10-5-10, 10-5-12.~~

~~590-4-4-.05 Market Timing and Late Trading.~~

~~(1) The practice of market timing, which involves fund executives and other related personnel disregarding stated market timing policies to benefit select investors or fund personnel at the expense of other investors by making rapid trades that exploit differences between a fund's share price and the prices of securities in the fund's portfolio, is prohibited as an omission of a material fact and as a failure to adequately supervise fund personnel when the practice is not disclosed.~~

~~(2) The practice of late trading, which, in some forms, involves fund personnel permitting select customers to capitalize on significant price changes in fund shares by allowing those customers to price their trades using the net asset value as of market close although those customers enter their orders after market close (a practice that violates SEC Rule 22c-1 promulgated under Section 22(c) of the Investment Company Act of 1940), is prohibited as a device, scheme, or artifice to defraud, as an omission of a material fact and a practice that operates as a fraud or deceit upon fund investors, and as a failure to adequately supervise fund personnel.~~

~~Authority O.C.G.A. Secs. 10-5-10, 10-5-12.~~